

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided. Medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See 86 Ill. Adm. Code 130.310. (This is a GIL).

February 6, 2003

Dear Xxxxx:

This letter is in response to your letter dated October 17, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at [www.revenue.state.il.us/Laws/regs/part1200/](http://www.revenue.state.il.us/Laws/regs/part1200/).

In your letter, you have stated and made inquiry as follows:

The following letter requests information concerning the application of sales or use tax to products sold by a medical device manufacturer. The taxpayer's customer base includes distributors, ambulatory surgery centers (ASC) that may or may not be affiliated with a hospital, physician offices, and hospitals.

**Product Status (Taxable or Exempt)**

Please indicate whether the following products are exempt or partially exempt within your state and reference the statutory or regulatory basis for your response. Please note that all items listed below are marketed and sold as disposable medical products, and thus, these products are single use only.

1. Microsurgical Knives - primarily used but not limited to cataract surgery, nerve repair, cardio surgery and hair transplant procedures. The product is primarily used by ophthalmologists in both hospitals and ASCs. The product is single use and disposed of immediately after the procedure is performed.

Exempt from sales tax? Yes or No. If taxable, at what rate?

2. Lasik Blades - a medical cutting instrument used during Laser-Assisted In Situ www.iltax.com go to help and resources how to get help then email, sales and excise tax technical questions/comments: opens window to chief legal counselKeratomileusis (LASIK) procedures to correct an individual's impaired vision. The product is used by ophthalmologists in both hospitals and ASCs.

The product is single use and disposed of immediately after the procedure is performed.

Exempt from sales tax? Yes or No. If taxable, at what rate?

3. Punctum Plugs - a medical component non-surgically inserted into the punctal opening of the eye, used to prevent dry eye syndrome. The product is used by ophthalmologists and/or optometrists in ASCs and physician offices. Depending on the plug, it either remains permanently in the eye after surgery or dissolves.

Exempt from sales tax? Yes or No. If taxable, at what rate?

4. Eye Shields - Aluminum or plastic eye shield placed over the eye to offer protection after ophthalmic surgery. The product is used by ophthalmologists in both hospitals and ASCs and is disposed of by the patient after use.

Exempt from sales tax? Yes or No. If taxable, at what rate?

5. Cannulas - a medical instrument used as an irrigation device to keep the eye moist during ophthalmic surgery. The product is used by ophthalmologists in both hospitals and ASCs. The product is single use and disposed of immediately after the procedure is performed.

Exempt from sales tax? Yes or No. If taxable, at what rate?

6. Ophthalmic Sutures (Stitches) - Surgical device used to close incisions in the eyes during surgery. The product(s) are used by ophthalmologists in both hospitals and ASCs. The sutures are both removable and absorbable. Below is a list of Ophthalmic sutures:

- A. Chromic Gut Suture
- B. Black Mono Nylon Suture
- C. Plain Gut Suture
- D. Polyglycolic Acid (synthetic absorbable) Suture
- E. Blue Mono Polypropylene Suture
- F. Black Braided Silk Suture
- G. Blue Virgin Silk Suture

Exempt from sales tax? Yes or No. If taxable, at what rate?

7. General Sutures (Stitches) - Surgical Device used to close internal and external wounds. The product(s) are used by a multitude of physician types in both hospitals and ASCs. The sutures are both removable and absorbable. Below is a list of different types of general sutures:

- A. Chromic Gut Suture
- B. Plain Gut Suture
- C. Nylon Suture
- D. Polypropylene Suture
- E. Polyester Suture
- F. Silk Suture

- G. Stainless Steel Suture
- H. Polyglycolic Acid (Synthetic Absorbable) Suture
- I. Fast absorbing Polyglycolic Acid (Synthetic Absorbable) Suture
- J. PCL monofilament (Synthetic Absorbable) Suture

Exempt from sales tax? Yes or No. If taxable, at what rate?

8. Microsuture (Stitches) - Surgical Device specifically designed to treat nerve repair, reconnect torn/cut veins, and reattach limbs/extremities. The product(s) are primarily used by micro surgeons and cosmetic surgeons in both hospitals and ASCs. Below is a list of different types of Microsuture:

- A. Nylon Suture
- B. Polypropylene Suture

Exempt from sales tax? Yes or No. If taxable, at what rate?

9. Cardiovascular Suture (Stitches) - Surgical Device primarily used in open-heart surgery to close incisions of the heart itself, correct arterial problems and to attach/correct heart valve problems. The product(s) are primarily used by cardio/thoracic surgeons in hospitals. Below is a list of different types of Cardiosuture:

- A. Polypropylene Suture
- B. Coated Polyester Suture

Exempt from sales tax? Yes or No. If taxable, at what rate?

10. Bonewax - Product used to cease blood flow (Hemastasis) of the bone by acting as a mechanical barrier. Most commonly used in the sternum. The product is primarily used by cardio/thoracic surgeons in hospitals.

Exempt from sales tax? Yes or No. If taxable, at what rate?

11. Spacers - Used primarily in prostate surgery. The spacer is made from chromic gut suture and dissolves in the body.

Exempt from sales tax? Yes or No. If taxable, at what rate?

12. Veterinary Suture (Stitches) - Surgical Device specifically designed for veterinary use to close wounds both internally and externally. The product(s) are used by veterinarians in vet clinics and hospitals.

- A. Chromic Gut Suture
- B. Plain Gut Suture
- C. Nylon Suture
- D. Polypropylene Suture
- E. Polyester Suture
- F. Silk Suture
- G. Stainless Steel Suture
- H. Polyglycolic Acid (Synthetic Absorbable) Suture

- I. Fast absorbing Polyglycolic Acid (Synthetic Absorbable) Suture
- J. PCL monofilament (Synthetic Absorbable) Suture
- K. Surgical Adhesives (Glue)

Exempt from sales tax? Yes or No. If taxable, at what rate?

13. Umbilical Tape - Used in the veterinary industry primarily to tie off the umbilical cords of large animals. The product(s) are used by veterinarians in vet clinics and hospitals.

Exempt from sales tax? Yes or No. If taxable, at what rate?

### **Customer Status (Taxable or Exempt )**

As previously mentioned, the taxpayer sells its products to several types of customers. If any of the products described above are generally taxable, please indicate if the state exempts sales of these products by the taxpayer to the customer types listed below. In other words, can the following customers purchase the products described above exempt from state sales/use tax. Assume that all applicable exemption certificates/documentation are obtained and that all products are sold for use in a manner for which they were manufactured. Also, please include the relevant statutory or regulatory cite governing your response. Customer types include:

- 1. Distributors purchasing for resale. Exempt - Yes or No.
- 2. Ambulatory surgery centers (ASC).
  - a. Governmental. Exempt Yes or No.
  - b. Non-Profit. Exempt Yes or No.
  - c. For Profit. Exempt Yes or No.
- 3. Physician offices.
  - a. Governmental. Exempt Yes or No.
  - b. Non-Profit. Exempt Yes or No.
  - c. For Profit. Exempt Yes or No.
- 4. Hospitals.
  - a. Governmental. Exempt Yes or No.
  - b. Non-Profit. Exempt Yes or No.
  - c. For Profit. Exempt Yes or No.

For purposes of this information request, 'ambulatory surgery centers (ASC)' are defined/described as free-standing outpatient surgery centers that can be individually owned and managed or may have an affiliation with a hospital. These facilities tend to be smaller, less established, and more geographically dispersed than hospitals, and are thus better suited to the capabilities of local and regional dealers.

### **Conclusion**

Please address all correspondence to the following:

NAME/ADDRESS

The taxpayer is appreciative of your prompt assistance in regards to this request. The taxpayer acknowledges the importance of accurate information for sales tax purposes to assure maximum compliance with state sales/use tax law. If you need a further explanation of the products or their use, please contact me.

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided.

Medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See the enclosed copy of 86 Ill. Adm. Code 130.310. Items subject to this lower tax rate include prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing utensils, syringes, and needles used by diabetics, for human use.

A medicine or drug is defined as any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities. A medical appliance is defined as an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See part (c) of Section 130.310. Medical devices that are used for diagnostic or treatment purposes do not qualify for the lower tax rate.

In general, in order to qualify as a medical appliance, the product must directly substitute for a malfunctioning part of the body. Some of the products specifically listed in the regulation as qualifying for the reduced rate are home glucose monitors, home blood glucose test strips and related supplies used to treat human diabetes. Other products that directly substitute for a malfunctioning part of the body include urological catheters, leg bags, ostomy pouches and drain bags, and mastectomy prosthetic devices such as forms and bras.

Please note that supplies, such as non-sterile cotton swabs, disposable diapers, toilet paper, tissues and towelettes and cosmetics, such as lipsticks, perfume and hair tonics do not qualify for the reduced rate. Sterile dressings, bandages and gauze do qualify for the reduced rate.

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive exemption identification numbers (an "E" number). See the enclosed copy of 86 Ill. Adm. Code 130.2007. This number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax. Organizations that are recognized as non-profit under Internal Revenue Code Section 501(c)(3), are not necessarily exempt organizations pursuant to Illinois tax law. Such organizations must obtain an Illinois "E" number to qualify. Please be aware that only sales to organizations holding the E number are exempt, not sales to individual members of the organization.

Microsurgical knives, lasik blades, eye shield, and cannulas do not qualify as low rate items. Punctum plugs and sutures qualify for the low rate. We could not determine the exact use of spacers and bonewax to give a ruling.

A veterinarian is engaged in a service occupation subject to the Service Occupation Tax. The Service Occupation Tax is a tax imposed upon tangible personal property transferred as an incident of the sale of service. See 86 Ill. Adm. Code 140.101, enclosed. If a veterinarian transfers tangible personal property to a patient as a result of the practice of veterinary medicine, the veterinarian will

be subject to Service Occupation Tax for that type of transfer, rather than Retailers' Occupation Tax. Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code Part 140 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Further, please note that veterinarians owe Use Tax when they purchase items, such as instruments, syringes and needles, and other equipment that are not transferred subject to their sale of service and that they use when performing their service.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.